

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

STATE OF TEXAS, et al.,

Plaintiffs,

V.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, et al.,

Defendants,

BAYOU CITY WATERKEEPER,

**Intervenor-Defendant.**

[illegible]

No. 3:23-cv-17 (consolidated  
with No. 3:23-cv-20)

## PARTIES' PROPOSAL FOR FURTHER PROCEEDINGS

Pursuant to this Court's July 10 Order, Dkt. No. 81, the Parties submit this proposal for further proceedings.

In these consolidated cases, Plaintiffs challenge the *Revised Definition of “Waters of the United States,”* 88 Fed. Reg. 3004 (“2023 Rule”). The 2023 Rule is currently enjoined in 27 states, including Texas and Idaho. On May 25, the Supreme Court issued its ruling in *Sackett v. EPA*, 598 U.S. 651 (2023), which addresses the standard for determining what constitutes “waters of the United States.” On September 8, Federal Defendants (the “Agencies”) published a final rule that amended provisions in the Code of Federal Regulations promulgated in the 2023 Rule. *Revised Definition of “Waters of the United States”*; *Conforming*, 88 Fed. Reg. 61964 (“Conforming Rule”). Because the

2023 Rule is enjoined in Texas and Idaho pursuant to this Court's March 19 Order, Dkt. No. 60, the Conforming Rule is not in effect in Texas and Idaho. Plaintiffs intend to pursue their challenge to the 2023 Rule as amended by the Conforming Rule (the "Amended 2023 Regulations"). Accordingly, Plaintiffs hereby withdraw their motions for summary judgment (filed prior to the issuance of the Conforming Rule), Dkt. Nos. 78 & 79. Plaintiffs will file amended complaints, to which the Agencies and Intervenor-Defendant will answer or respond. After that, the Parties will confer and propose further proceedings.

Accordingly, the Parties propose that the Court enter an order providing that:

1. Plaintiffs' motions for summary judgment, Dkt. Nos. 78 & 79, are stricken.
2. State Plaintiffs shall file an amended complaint to challenge the Amended 2023 Regulations by no later than November 13, 2023.
3. Association Plaintiffs shall file an amended complaint to challenge the Amended 2023 Regulations by no later than November 13, 2023.
4. The Agencies shall answer or otherwise respond to the amended complaints by no later than December 13, 2023.
5. Intervenor-Defendant shall answer or otherwise respond to the amended complaints by no later than December 13, 2023.
6. The Parties shall propose a schedule or schedules for further proceedings no later than December 21, 2023.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2023, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Sarah Izfar